

**Town of Mount Desert Planning Board
Meeting Minutes
August 11, 2021**

This meeting was held virtually and was recorded.

Board Members Present:

Chair William Hanley, Christie Anastasia, Tracy Loftus Keller, David Ashmore, Meredith Randolph

Public Present:

Pier Fisher, Salie Davis, Kendall Davis, Torie McMorrow-Hallcock

I. Call to order 6:00 p.m.

Chair Hanley called the meeting to order at 6:02PM. Board Members were notified.

II. Approval of Minutes

July 21, 2021: MS. LOFTUS KELLER MOVED, WITH MS. RANDOLPH SECONDING, APPROVAL OF THE JULY 21, 2021 MINUTES AS PRESENTED.

VOTE:

TRACY LOFTUS KELLER: AYE

MEREDITH RANDOLPH: AYE

CHRISTIE ANASTASIA: AYE

DAVID ASHMORE: AYE

CHAIR WILLIAM HANLEY: AYE

MOTION APPROVED 5-0.

III. Conditional Use Approval Application(s):

A. Conditional Use Approval Application #015-2021

OWNER(S) NAME(S): Pierrepont M. Fisher

AGENT(S) NAME(S): Stephanie Fisher-Mills

LOCATION: 13 Davis Lane, Otter Creek

TAX MAP: 033 **LOT:** 026-001 **ZONE(S):** Village Residential 1 (VR1)

PURPOSE: Section 3.4 – Animal Husbandry 2 (Non-Commercial). The Care and Keeping of Livestock/Poultry – Chickens. Chicken Coop with Run.

SITE INSPECTION: 4:00PM Masks Required During Site Inspection.

CEO Keene confirmed adequate Public Notice. Abutters were notified.

Chair Hanley reported on the Site Inspection. He and Ms. Loftus Keller were in attendance with the Agent and two abutters. The chickens are already on site. They are in an enclosed pen with a coop. The pen is chicken wire fencing approximately 4 feet in height on a 2'x4' wood frame. There is a top to the pen. There are six chickens. The chickens are not allowed out of the pen. Sawdust or something similar is on the ground of the pen. Chicken manure composted for the

1 garden.

2

3 Neighbors voiced concern regarding the appearance of the chicken coop, how disposal of
4 manure was being managed, and whether any additional structures are planned.

5

6 Agent Pier Fisher confirmed this was an after-the-fact application; she did not realize a permit
7 was necessary for keeping chickens.

8

9 CEO Keene reported she'd been trying since November to discuss compliance with the owners.

10

11 Abutter Salie Davis reported that here is a 25% grade where the pen is and approximately a 14-
12 degree slope. There are two wells within 30 feet of the chicken coop. One well is on the
13 downhill grade and supplies water to two residences. She worried about contamination due to
14 the pin gravel used and the rock ledge. She is concerned about the safety of the coop and also
15 the aesthetics; it appears to be haphazardly constructed of miscellaneous pieces.

16

17 Abutter Kendall Davis voiced concern that salmonella can be contracted through animal contact
18 and animal environments.

19

20 Ms. Fisher emphasized that chickens have been on site for two years with no problems
21 reported.

22

23 Chair Hanley pointed out that space on the property is limited.

24

25 Ms. Fisher agreed that level areas on the property are limited. She prefers the chickens where
26 she can see them, due to the potential for predation. Chicken waste is absorbed into wood
27 chips and composted. The composting process consists of layering chicken manure and
28 shavings with leaves and kitchen scraps. She caps off the hot compost pile and once it's
29 composted, she adds it to the garden.

30

31 Mr. Davis asserted the pin gravel used and the ledge proximity underneath the shallow layer of
32 pin gravel allows for runoff down natural drainage routes when it rains. Some of this runoff can
33 end up in the wetland area behind Wall Street. Ms. Fisher argued that wild birds are also a
34 possible cause of water contamination.

35

36 Ms. Fisher reported she cleaned the coop every couple of weeks. The chicken pen is a
37 sustainable system. She adds carbon and wood chips to the nitrogen, and it decomposes. Her
38 well is on the other side of the house and 50 or more feet from the coop. She did not believe
39 her filtering process would allow contamination.

40

41 Ms. Davis reiterated that a well serving two households is within 30 feet of the coop on the
42 downhill side. Ms. Davis observed a large pile of compost on the property line during the site
43 inspection.

44

1 Chair Hanley felt there was a lot of activity occurring on the very small, full lot. Space is limited.
2 The chickens are on a slight slope. Additionally, the chicken coop appears to be made from
3 found elements. It looks ramshackle and does not appear as permanent as some of the other
4 coops the Board has seen. Ms. Loftus Keller concurred. Ms. Loftus Keller noted she had not
5 been aware of wells in close proximity. The potential for water runoff flowing toward the wells
6 is concerning.

7
8 Chair Hanley wondered if level ground couldn't be built up for the coop. Ms. Fisher explained
9 the reason for the grade is so runoff can occur, to keep the space relatively dry. She inquired if
10 a retaining wall would help.

11
12 Chair Hanley suggested a pen structure with more permanence. Ms. Fisher noted the structure
13 was built as it was so the pen could be moved as necessary.

14
15 Ms. Davis requested the Planning Board consider requiring the pen be moved further from the
16 closest wells. Perhaps a spot behind the house might be more suitable. Additionally, putting it
17 behind the house would keep it out of sight from the neighbors. Perhaps reducing the number
18 of chickens should be considered, in light of the small size of the lot.

19
20 Mr. Davis was concerned that Ms. Fisher uses a hot composting technique. Bacteria grows in
21 hot composting. Ms. Fisher disagreed. Hot composting is designed to kill seeds and bacteria.

22
23 Ms. Anastasia noted the chickens have been on site for two years. She wondered if anyone's
24 tested the well water. No one in attendance had. Ms. Fisher was not aware of any illness that
25 could be due to contamination. Ms. Davis was willing to test her well. Her well is further from
26 the coop than the neighbors' wells.

27
28 Chair Hanley suggested other Planning Board Members visit the site; it might provide them with
29 a better understanding of the situation. He suggested continuing the issue until the next
30 meeting date so those Board members who were not at the site visit can schedule a visit
31 between now and then. Board members were willing to take a visit to the site.

32
33 Ms. Randolph asked if there are any records showing the wells. Knowing the locations would
34 help. Mr. Ashmore agreed the Board should have a sketch showing the location of adjacent
35 wells.

36
37 Ms. Davis noted the coop's construction is also of concern. This is a new, larger construction
38 than what was there before.

39
40 Ms. Randolph believed well testing would only show if water is contaminated at that moment.
41 Ms. Fisher argued that well contamination cannot be definitively identified as coming from her
42 chickens. There are a number of wild birds and animals in the area.

43
44 CEO Keene reported that the Town does not keep records of private well locations. The Town

1 has no jurisdiction over them. Some wells are marked on the Maine Geological Survey. Wells
2 can be difficult to locate; some are below grade, or not well marked. Permission must be
3 granted to go on other property to locate them. Ms. Fisher would have to visit other properties
4 to take measurements of wells and their distance to her chicken coop.

5
6 Ms. Anastasia believed that most chicken coops the Board has looked at have been on level
7 ground. She wondered if there were some sort of structural change to the site that can be
8 done to alleviate concerns of runoff.

9
10 Chair Hanley cautioned that finding the wells could prove difficult. Getting other Planning
11 Board members to the property is the priority.

12
13 Mr. Ashmore suggested people concerned with the wells might be able to provide information
14 on the approximate location of the wells. Ms. Fisher was willing to look into the sites of the
15 other wells. Ms. Davis stated the wells are visible from the ROW.

16
17 MS. ANASTASIA MOVED, WITH MS. LOFTUS KELLER SECONDING, TO CONTINUE THE ITEM TO
18 THE AUGUST 25, 2021 PLANNING BOARD MEETING AND IN THE INTERIM BETWEEN THIS
19 MEETING AND THE NEXT THOSE BOARD MEMBERS WHO HAVE NOT VISITED THE SITE, CAN
20 SCHEDULE A VISIT.

21
22 Ms. Anastasia was unsure whether it was a reasonable or feasible request to ask for a sketch of
23 wells on other properties, given the fact that the Town does not have this information
24 available. Chair Hanley agreed.

25
26 CEO Keene noted that the Maine Geological Survey Well Database notes one nearby well
27 location. She agreed to send what information was available on the database to Board
28 Members. Mr. Ashmore noted that not all wells will be in the database, only those submitted
29 by the well driller or landowner.

30
31 Ms. Davis inquired whether the next site visit will be public, and will she be notified. Chair
32 Hanley explained that a meeting continued to a date certain does not require additional public
33 notice. Board Members not in attendance at this site visit are being requested to coordinate a
34 visit of their own between now and August 25.

35
36 Ms. Fisher noted that if Board Members call or email, she would be happy to meet them on the
37 property and show them the site.

38
39 VOTE:

40 CHRISTIE ANASTASIA: AYE

41 DAVID ASHMORE: AYE

42 MEREDITH RANDOLPH: AYE

43 TRACY LOFTUS KELLER: AYE

44 CHAIR WILLIAM HANLEY: AYE

1 MOTION APPROVED 5-0.

2
3 Ms. Davis offered to provide a picture of the well closest to the coop, considering that she may
4 not be at the visits the other Planning Board Members coordinate. Chair Hanley encouraged
5 Ms. Davis to email her information to the CEO.

6
7 **IV. Land Use Zoning Ordinance Section 6B.11 Lots § (2) Access - No lot may be built**
8 **upon or otherwise developed unless it has a private road or driveway for access to a**
9 **public way by a valid right of way benefiting the lot (or a combination of driveway and/or one**
10 **of more private roads) or by ownership of land abutting the public way. If more than 2 lots**
11 **are accessed by the same private road, then it must meet the Street Design and Construction**
12 **Standards of Section 5.14 of the Subdivision Ordinance. If no more than 2 lots are accessed by**
13 **the same private road or driveway, then it must meet either the said Street Design and**
14 **Construction Standards or the Driveway Construction standards of Section 6B.6 of this**
15 **Ordinance. A preexisting primary access drive that serves up to 2 existing lots need not meet**
16 **the requirements of Section 6B.6. All lots must maintain safe access for fire, police, and**
17 **emergency vehicles, as determined by the Fire Chief.**

18
19 **Subdivision Ordinance Section 6. Waiver and Modifications of this Ordinance § 6.1.1 Where**
20 **the Board finds that a private road providing access to a lot or lots cannot meet the Street**
21 **Design and Construction standards of Section 5.14 because (a) the application of land use**
22 **restrictions would prevent the work required to bring an existing road into compliance or (b)**
23 **physical conditions of the site render strict compliance impossible, then the Board may waive**
24 **such standards. However, in all such cases, the Board must find that (a) the proposed plan**
25 **brings the road into compliance as much as is feasible, (b) the proposed plan will provide safe**
26 **access to and from the property, and (c) the proposed plan will allow for access to the site for**
27 **emergency vehicles.**

28
29 **PROPERTY OWNER(S):** Eileen McMorrow-Hallcock

30 **PROPERTY LOCATION:** 10 Bentley Lane, Mount Desert

31 **TAX MAP:** 010 **LOT:** 194 **ZONE(S):** Shoreland Residential 2 (SR2) Residential Two (R2)

32 **PURPOSE:** Request a waiver of the Street Design and Construction Standards of Section
33 5.14 of the Subdivision Ordinance for an existing private road.

34 **SITE INSPECTION:** 4:45PM Masks Required During Site Inspection.

35
36 Ms. Loftus Keller reported on the site visit. There is a narrow ROW used as a driveway. An
37 adjacent neighbor uses the driveway as well. A third party also has access. The driveway is a
38 narrow gravel driveway with a tree canopy. There is no turn-around space for emergency
39 vehicles.

40
41 CEO Keene reported that in 1986 Ms. McMorrow-Hallcock purchased 2.77 acres with a 30-foot-
42 wide ROW. The lot required 100 feet of road frontage at the time of purchase; therefore, the
43 lot was created non-conforming and was subsequently developed. In 2015 the Ordinance
44 changed, doing away with the road frontage requirement, provided the property conformed

1 with the access requirements under Section 6B.11.2. The ROW serves three lots. The ROW
2 goes over the Chase lot. Ms. McMorrow-Hallcock inquired of Mr. Chase whether he was willing
3 to give her a larger ROW. Mr. Chase was unwilling to do so. A statement was provided from
4 BCM Construction quoting a price of \$38,500.00 to upgrade the roadway to approximately 1000
5 feet in to meet the standards of Section 5.14 of the Subdivision Ordinance. Also submitted is a
6 letter from the Fire Chief stating the Fire Department can provide adequate emergency services
7 provided the entryway is slightly widened, and a 14'5" vertical and horizontal clearance can be
8 maintained at the driveway entrance. Emergency vehicles and apparatus can back up down the
9 driveway in the absence of a turn-around.

10
11 CEO Keene reported that Ms. McMorrow-Hallcock is selling the property which is why the issue
12 came up.

13
14 Ms. McMorrow-Hallcock confirmed she wants to sell the property. She bought the property
15 this way. The Mount Desert Fire Department confirmed earlier this spring that they are able to
16 back out of the drive adequately. Ms. McMorrow-Hallcock is willing to work on improving the
17 situation, however she is not willing to spend the cost of upgrades on road frontage owned by
18 someone else.

19
20 Chair Hanley noted the character of the road is narrow and wooded. Its character is unique and
21 distinct.

22
23 Ms. Randolph pointed out that the owner does not have the wherewithal to make
24 improvements on someone else's property.

25
26 Chair Hanley agreed.

27
28 Section 6.1.1 in the Subdivision Ordinance required review for the issue. Chair Hanley read the
29 pertinent section again:

30
31 *Subdivision Ordinance Section 6. Waiver and Modifications of this Ordinance §*
32 *6.1.1 Where the Board finds that a private road providing access to a lot or lots*
33 *cannot meet the Street Design and Construction standards of Section 5.14*
34 *because (a) the application of land use restrictions would prevent the work*
35 *required to bring an existing road into compliance or (b) physical conditions of*
36 *the site render strict compliance impossible, then the Board may waive such*
37 *standards. However, in all such cases, the Board must find that (a) the proposed*
38 *plan brings the road into compliance as much as is feasible, (b) the proposed plan*
39 *will provide safe access to and from the property, and (c) the proposed plan will*
40 *allow for access to the site for emergency vehicles.*

41
42 MS. RANDOLPH MOVED, WITH MS. ANASTASIA SECONDING, TO FIND IT NOT FEASIBLE TO MEET
43 THE STREET DESIGN AND CONSTRUCTION STANDARDS OF SECTION 5.14, DUE TO THE
44 FOLLOWING FACTS: THE EXISTING CONDITIONS ALLOW FOR EMERGENCY VEHICLE ACCESS PER

1 THE FIRE CHIEF, IT IS IMPOSSIBLE FOR THE PRIVATE ROAD TO MEET THE STANDARDS BECAUSE
2 PART OF THE ROAD IS ON ANOTHER'S PROPERTY, AND PER THE LETTER RECEIVED FROM
3 PROPERTY OWNER BART CHASE DECLINING TO GIVE THE OWNER A LARGER RIGHT OF WAY.
4

5 Mr. Ashmore pointed out that the Fire Chief recommended a widening of the end of the
6 driveway and the removal and maintenance of some vegetation. Ms. McMorrow-Hallcock
7 explained that Mr. Chase owns the entire road. She was not sure how to ensure maintenance
8 of the road. CEO Keene noted that due to Ms. McMorrow-Hallcock's ROW over the drive, she
9 has jurisdiction in that 30-foot-wide space. The trimming appears to be modest.

10
11 **AMENDED MOTION:**

12 MS. RANDOLPH MOVED, WITH MS. ANASTASIA SECONDING, TO GRANT A WAIVER PER
13 SUBDIVISION ORDINANCE SECTION 6. WAIVER AND MODIFICATIONS OF THIS ORDINANCE §
14 6.1.1, BASED ON THE FINDINGS OF FACT THAT THE PRIVATE ROAD CAN'T MEET THE
15 STANDARDS BECAUSE IT IS ON OTHER PROPERTIES, THE EXISTING CONDITIONS ALLOW FOR
16 EMERGENCY VEHICLE ACCESS PER THE FIRE CHIEF WITH THE CONDITION OF MODEST
17 WIDENING AND MAINTENANCE OF THE ENTRANCE OCCUR, AND, PER LETTER FROM PROPERTY
18 OWNER BART CHASE DECLINING TO GIVE THE OWNER A LARGER RIGHT OF WAY.

19 **VOTE:**

20 CHRISTIE ANASTASIA: AYE

21 MEREDITH RANDOLPH: AYE

22 TRACY LOFTUS KELLER: AYE

23 DAVID ASHMORE: AYE

24 CHAIR WILLIAM HANLEY: AYE

25 MOTION APPROVED 5-0.

26
27 **V. Other**

28 Discussion of the adoption of the remote participation policy ensued. Chair Hanley attended
29 the last SelectBoard meeting to see how the meeting occurred. He reported that Tax Assessor
30 Kyle Avila was in attendance and provided technical support. CEO Keene agreed to learn the
31 technology in order to provide that support and she can be at the meetings.
32

33 Ms. Anastasia asked if there was a way to fluctuate between hybrid and Zoom-only meetings
34 based on CDC risk assessments. The risk assessments change quickly. Chair Hanley believed
35 common sense must be applied.
36

37 Members would likely feel less compelled to be in person at a meeting during high transmission
38 risk levels.
39

40 Mr. Ashmore preferred at least another few meetings occur remotely, as long as doing so is
41 legal.
42

43 CEO Keene believed the policy must be adopted.
44

1 It was the understanding from the Selectboard meeting discussion that:

- 2 - The policy to be voted on approves an extension of a hybrid meeting format. If the
- 3 Board does not vote to accept this policy, in-person meetings will be required.
- 4 - The Board appears to have some leeway in how those hybrid meetings can occur and
- 5 what they might look like.
- 6 - Town Manager Lunt believed that one or more Board Members must attend in person
- 7 for hybrid meetings.
- 8 - For those Board Members who feel uncomfortable about attending an in-person
- 9 meeting, their concern is likely reason enough to allow them to continue attending
- 10 remotely.
- 11 - All votes must continue via the roll call format currently being used if some members
- 12 are not physically at the meeting.

13
14 Mr. Ashmore pointed out that the policy being voted on is dated June 28. Things have changed
15 since then. If the Board is not allowed to continue meeting virtually, then he would like a legal
16 opinion on the changes that have occurred since June and the effect of those changes.

17
18 Chair Hanley believed the policy required a vote. He was not sure what would happen should
19 the Board continue in the format they feel most comfortable with.

20
21 Ms. Anastasia wondered how to proceed if no members of the public show up to in-person
22 meetings.

23
24 Chair Hanley suggested voting to adopt the policy that allows the hybrid format to continue,
25 followed by a vote to follow CDC guidelines with regard to in-person meetings.

26
27 Ms. Randolph felt the term “hybrid” makes it a given that not all attendees will be meeting in
28 person.

29
30 Mr. Ashmore did not believe the policy made it clear what reasons for not attending in person
31 were considered viable.

32
33 Chair Hanley stated that if someone needs to be at each meeting in person, he would do so.
34 Mr. Ashmore wondered would happen should Chair Hanley’s willingness change.

35
36 Ms. Anastasia suggested conditioning the vote to last for a certain time, bearing in mind that
37 Covid conditions can change. Standards like social distancing and modified occupancy
38 guidelines must still be followed.

39
40 Ms. Randolph concurred with Chair Hanley to adopt the policy with adherence to CDC
41 guidelines.

42
43 MS. RANDOLPH MOVED, WITH MS. LOFTUS KELLER SECONDING, TO ADOPT THE TOWN OF
44 MOUNT DESERT REMOTE PARTICIPATION POLICY, WHILE ADHERING TO ALL OTHER CDC

1 GUIDELINES, WITH RESPECT TO CURRENT AND FUTURE CDC GUIDANCE FROM THE STATE.

2 VOTE:

3 MEREDITH RANDOLPH: AYE

4 TRACY LOFTUS KELLER: AYE

5 CHRISTIE ANASTASIA: AYE

6 DAVID ASHMORE: AYE

7 CHAIR WILLIAM HANLEY: AYE

8 MOTION APPROVED 5-0.

9

10 Ms. Loftus Keller wondered if it would be of benefit to get legal feedback or an opinion from
11 MMA on the policy and what it allows.

12

13 **VI. Adjournment**

14 MS. RANDOLPH MOVED, WITH MS. ANASTASIA SECONDING, TO ADJOURN.

15 VOTE:

16 CHRISTIE ANASTASIA: AYE

17 MEREDITH RANDOLPH: AYE

18 TRACY LOFTUS KELLER: AYE

19 DAVID ASHMORE: AYE

20 CHAIR WILLIAM HANLEY: AYE

21 MOTION APPROVED 5-0.

22

23 The Meeting adjourned at 7:50PM.